



Federal Communications Commission
Washington, D.C. 20554

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DA 07-3503

In Reply Refer to:

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Union-Carolina Broadcasting Co., Inc.
P.O. Drawer E
Toccoa, GA 30577

In re: **AM Broadcast Auction No. 84**

Union-Carolina Broadcasting Co., Inc.
WBCU(AM), Union, South Carolina
Facility ID No. 7088
File No. BMJP-20040126APL

**Application for Major Modification to
AM Broadcast Station**

Dear Applicant:

We have before us a Petition for Reconsideration ("Petition") filed April 7, 2005, by Union-Carolina Broadcasting Co., Inc. ("Union"). Union applied in the AM Auction No. 84 ("Auction 84") filing window for a major modification to the facilities of its station WBCU(AM), Union, South Carolina, specifically seeking to change frequency from 1460 kHz to 690 kHz and move its transmitter site, in order to provide greater signal coverage. For the reasons stated below, we deny Union's Petition.

Background. Union's application was listed in a Public Notice of singleton (non-mutually exclusive) applicants who filed Form 175 short-form applications in the filing window for AM Broadcast Auction No. 84.¹ According to the *Singleton Filing Public Notice*, those applicants listed were to file Form 301 long-form applications between November 18, 2004, and January 18, 2005.² Additionally, the Media Bureau ("Bureau") cautioned that "[t]he staff will dismiss, without further processing, a previously filed Form 301 tech box submission of any applicant listed [in the Singleton Filing Public Notice] that fails to submit the complete FCC Form 301 by January 18, 2005."³ Union did not timely file a complete Form 301, and its filing window tech box submission was accordingly dismissed.⁴

¹ *AM Auction No. 84 Singleton Applications – Media Bureau Announces Form 301 Application Deadline and Ten-Day Petition to Deny Period*, Public Notice, 19 FCC Rcd 22569, 22573 (MB 2004) ("*Singleton Filing Public Notice*").

² *Id.* at 22569.

³ *Id.* at 22571.

⁴ *AM Auction No. 84 Singleton Applications Dismissed for Failure to File*, Public Notice, 20 FCC Rcd 5109 (MB 2005).

Discussion. Union claims that it uploaded the complete Form 301 almost 24 hours before the filing deadline, and believed it had been filed, but that it discovered two weeks later that the Bureau's Consolidated Data Base System ("CDBS"), through which applications are electronically filed, "did not recognize the application as having been timely filed."⁵ Specifically, Union states that its counsel is well acquainted with CDBS electronic filing and that, because "[a]ll other applications filed that evening were filed, received and processed by the FCC correctly, the only logical explanation that exists is that some unknown snafu occurred, beyond the control of the applicant or its counsel, that interfered with the Commission's receipt of the application."⁶

Union seeks waiver of the filing deadline in order to file its application. It states that waiver would serve the public interest, as WBCU(AM) is the only station licensed to and serving Union County, South Carolina, and that service would be enhanced by the frequency change and site change Union seeks in its application. Union also states that waiver "will do no harm to the Commission's processes or the public interest."⁷ The combination of probable Commission error and lack of prejudice, argues Union, warrants waiver of the Form 301 application filing deadline.

We disagree. Waiver of our rules is appropriate when special circumstances warrant deviation from the general rule, and that deviation would serve the public interest.⁸ We find no special circumstances here. In several places, Union concludes that a CDBS "glitch" resulted in the failure of its Form 301 to be filed. However, Union fails to provide any evidence that the Commission was responsible for its failure to timely file its Form 301 application. There is no declaration from the individual responsible for filing the Form 301 application detailing the steps he or she took to assure proper filing. Significantly, Union provides no copy of the on-screen notice confirming that the Form 301 was successfully received for processing. In fact, a search of the CDBS filing database indicates that, while Union initiated the filing process for its Form 301 application, and completed validation checks, it did not complete the filing process. On the other hand, Union concedes that other applications were successfully filed during that time period.⁹ Given the lack of any evidence from Union detailing the filing process it undertook, or indicating that it received confirmation of successful filing, we can only conclude that it was Union that was responsible for the failure to file its Form 301 application within the 60-day window established in the *Singleton Filing Public Notice*, rather than some unspecified "glitch" in CDBS.

Union points to three cases to support its contention that Commission practice in auction cases is to be lenient in allowing late filing of long-form applications: *City Page & Cellular Services, Inc., et al.*,¹⁰ *Silver Palm Communications*,¹¹ and *Pinpoint Communications, Inc.*¹² In each of these cases, however, the late filers were the high bidders in completed Wireless Telecommunications Bureau

⁵ Petition at 2.

⁶ Petition at 5.

⁷ *Id.*

⁸ See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969).

⁹ Petition at 2.

¹⁰ *City Page & Cellular Services, Inc., et al.*, Order, 17 FCC Rcd 26109 (WTB 2002).

¹¹ *Silver Palm Communications*, Order, 17 FCC Rcd 6606 (WTB 2002).

¹² *Pinpoint Communications, Inc.*, Order, 14 FCC Rcd 6421 (WTB 1999).

(“WTB”) auctions. In those decisions, the WTB placed great emphasis on the fact that the delinquent filers had up to that point complied with all Commission deadlines, including short-form filing, upfront payment, and down payment deadlines. By way of contrast, Union has not undergone an auction process; its only prior act in this instance was timely filing the Form 175 application. Thus, unlike the late filers in the cases it cites, Union has not established a record of timely compliance with Commission auction deadlines.

Union also cites *Roamer One, Inc. and Certain 220 MHz Non-Nationwide Licensees* in support of its waiver request.¹³ *Roamer One* is distinguishable, however. In *Roamer One*, the Commission waived filing deadlines for applicants that experienced difficulties in electronically filing certain 220 MHz base station license modification applications. In so doing, the Commission concluded that it appeared “to be at least partially responsible for technical difficulties associated with the filing of applications,” as opposed to cases in which late filing was due to problems either entirely under the applicant’s control or which were reasonably foreseeable.¹⁴ The Commission also noted that limited waivers were appropriate where filers “initiated the filing in a timely manner, showed reasonable diligence when technical difficulties occurred, and were able to file very shortly after the deadline.”¹⁵ The applicants in *Roamer One* advised Commission staff of their electronic filing difficulties well before the filing deadline, and were advised by staff to file late applications accompanied by waiver requests.¹⁶ Here, by way of contrast, Union did not alert the staff to its filing difficulties until two weeks after the filing deadline.¹⁷ Moreover, as noted above, Union speculates that the Commission was responsible for its filing difficulties without providing any hard evidence to support its claim. We therefore find *Roamer One* to be inapposite.¹⁸

¹³ *Roamer One, Inc. and Certain 220 MHz Non-Nationwide Licensees*, Order, 17 FCC Rcd 3287 (2002) (“*Roamer One*”).

¹⁴ *Id.* at 3291.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Petition at 2.

¹⁸ We also distinguish *Gulf Coast Community College*, Letter, 20 FCC Rcd 17157 (MB 2005) (“*Gulf Coast*”), from the instant case on its facts. *Gulf Coast* was released November 3, 2005, and thus was not cited in Union’s April 7, 2005, Petition. In *Gulf Coast*, applicant Gulf Coast Community College (“GCCC”), like Union, failed timely to file its Form 301 application after being informed that it was a “singleton” Auction 84 applicant, and unsuccessfully attempted to attribute its failure to an unspecified CDBS error. While the Bureau rejected GCCC’s claim of Commission error, it found unique facts that justified waiver of the filing deadline (while imposing an apparent liability for forfeiture of \$3,000). Specifically, GCCC proposed a change of community of license that would provide first local transmission service to Southport, Florida, pleaded the loss of its then-current transmitter site and the inability to find an affordable replacement site that would cover its community of license, and emphasized that the proposed new site was farther inland, and thus less susceptible to damage from the hurricanes that plagued Florida during the summer and autumn of 2005. 20 FCC Rcd at 17158-60. Union does not cite similarly unique or compelling facts justifying the waiver sought. See *supra* note 8.

Conclusion / Action. We find that Union had adequate notice of the 60-day filing window in which it was to file its complete Form 301 application and of the deadline by which it was to file its application. We further find that Union's failure to file its application before the deadline was not the result of Commission error, but rather of Union's own conduct, and find that the public interest would not be served by waiver of the application filing deadline. Accordingly, Union's Petition IS DENIED.

Sincerely,

Peter H. Doyle, Chief
Audio Division
Media Bureau

cc: Dan J. Alpert, Esq.